

STATE OF CALIFORNIA  
FISH AND GAME COMMISSION  
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Section 7.50 (180)  
Title 14, California Code of Regulations  
Re: Smith River

- I.     Date of Initial Statement of Reasons:                     June 30, 2004  
       Date of Amended Initial Statement of Reasons:         August 18, 2004
- II.    Date of Pre-adoption Statement of Reasons:             September 17, 2004
- III.   Date of Final Statement of Reasons:                    October 26, 2004
- IV.    Dates and Locations of Scheduled Hearings:

- (a)    Notice Hearing:                     Date:         June 25, 2004  
  Location:     Crescent City
  - (b)    Discussion/Adoption               Date:         October 22, 2004  
        Hearing                            Location:     Concord

- V.     Update:

No modifications were made to the originally proposed language of the Initial Statement of Reasons.

The Commission adopted the proposal at its October 22, 2004 meeting.

- VI.    Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

**1. Chris Howard, Smith River Advisory Council, 8/18/04, letter.**

Opposed to the proposal. Requested that the public be allowed to provided testimony at the October 22 Commission meeting. Based on the recent listing of coho by the State and the MOA between the Department and NOAA Fisheries for steelhead management, the use of barbed hooks and extending the season through April should be re-evaluated. Also, a review of scientific literature regarding the impacts of barbed hooks should be performed.

**Department Analysis/Recommendation:** The Department agrees with the concerns expressed in opposition to the proposal. A change in the regulation to allow the use of barbed hooks in the Smith River would alter the efforts by the Department in 2002 to simplify and apply consistent hook regulations throughout the State. More importantly, the regulation change is not consistent with the Department's steelhead management agreement with NOAA Fisheries, consequently the Department does not support the proposal. However, the scientific literature suggests that the impact of barbed hooks in winter steelhead fisheries is not great. Various studies have reported a hooking mortality of adult steelhead of 5 percent or less of fish contacted. Assuming 20 percent of the adult steelhead population would be potentially hooked in a typical winter fishery, hooking mortality resulting from barbed hooks may affect one percent of the population.

Fishing is currently permitted on the Smith River from the fourth Saturday in May through March 31. The proposed regulation change suggests extending the fishing season in the main stem Smith River below the Middle and South forks from March 31 to April 30. This proposed regulation change is inconsistent with steelhead fishing seasons in most North Coast anadromous streams. The Department acknowledges that extending the season would potentially provide some additional angling opportunity for coastal cutthroat trout, but the proposal also identified a longer steelhead season. The adult steelhead fishery is primarily over by the end of March on the Smith River. Salmon and steelhead juveniles migrate to the ocean in April and May and extending the season through April increases the potential risk of incidental hooking mortality of coho and steelhead emigrants. In addition, the regulation change is not consistent with the Department's steelhead management agreement with NOAA Fisheries, consequently the Department does not support the proposal.

The October 22 meeting of the Commission provided for public comment regarding the Smith River proposal.

**2. Thomas Weseloh, California Trout, 10/11/04, letter.**

Opposed to the proposal to allow barbed hooks and extend the season through April. Also, the lack of a monitoring plan to determine the effect of the any regulation change was cited as a potential problem.

**Department Analysis/Recommendation:** See No. 1 above. In addition, the Department intends to monitor the Smith River fishery with available resources. In the event specific concerns related to angling regulations are expressed, the Department may reallocate its resources to investigate the concern.

VII. Location and Index of Rulemaking File:

A rulemaking file with attached index is maintained at:  
California Fish and Game Commission  
1416 Ninth Street  
Sacramento, California 95814

VIII. Location of Department files:

Department of Fish and Game  
1416 Ninth Street  
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change: None

(b) No Change Alternative:

A no-change alternative would prevent increased fishing opportunities and a more diverse fishery for Chinook salmon in the Smith River.

(c) Consideration of Alternatives: None

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States: The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses compete with businesses other states.  
The proposed regulation provides additional fishing opportunities and is likely to have a positive affect on local businesses.

(b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None.

(c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None
- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs mandated on Local Agencies or School Districts: None.
- (g) Costs Imposed on Any Local Agency or School District that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None.

## **Updated Informative Digest/Policy Statement Overview**

Current sport fishing regulations for the Smith River in the reaches of: a) the main stem from the mouth to the confluence with the Middle and South forks, b) the Middle Fork from the mouth to Patrick Creek, c) the South Fork from the mouth to Jones Creek, and the North Fork from the mouth to Stony Creek allow fishing during September 1 through March 31. The use of barbed hooks is prohibited all year.

This proposal recommends regulation changes for the Smith River estuary (downstream of the confluence with the Middle and South forks) that would extend the open season one additional month from March 31 to April 30, and allow the use of barbed hooks from September 1 through April 30. This proposal also includes eliminating the barbless hook restriction during the period from September 1 through March 31 in the other three anadromous reaches of the Smith River identified above.

Current regulations indicate that the South Fork Smith River from the mouth upstream approximately 1,000 yards to George Tyron bridge, and from Craigs Creek to Jones Creek as open to fishing from the fourth Saturday in May through March 31. In 2004, the presentation of the Smith River regulations was modified to include a more logical sequence by drainage (e.g., South Fork, Middle Fork, etc.); the seasons, bag limits and gear restrictions were unchanged. When drafting the new 2004 regulations the closure of the South Fork Smith River between the George Tryon Bridge and Craigs Creek was omitted. Regulations previous to 2004 indicated this reach as closed to fishing. The Department proposes to correct the inadvertent omission and identify this reach explicitly as closed to fishing.

Supplement  
Final Statement of Reasons for Regulatory Action

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Section VI. Summary of Primary Considerations Raised in Support of or opposition to the Proposed Actions and Reasons for Rejecting those Considerations:

**2. Thomas Weseloh, California Trout, 10/11/04, letter.**

Opposed to the proposal to allow barbed hooks and extend the season through April. Mr. Weseloh questioned the impact that barbed hooks may have on increasing steelhead mortality. He also indicated concerns regarding an apparent lack of a monitoring plan to determine the effect of any regulation change. In addition, concerns were expressed about the proposed regulation being inconsistent with the steelhead management MOA between DFG and NOAA Fisheries. Regulations that differ from other north coast steelhead fisheries may place additional burdens on enforcement staff.

**Commission Analysis/Recommendation:** Pursuant to Government code 11346.9(a)(3), the Commission rejected Mr. Weseloh's comments because the scientific literature suggests that the impact of barbed hooks in winter steelhead fisheries is not great. Various studies have reported a hooking mortality of adult steelhead of 5 percent or less of fish contacted. Assuming twenty percent of the adult steelhead population would be potentially hooked in a typical winter fishery, hooking mortality resulting from barbed hooks may affect one percent of the population. This level of mortality is relatively insignificant. The Commission directed the Department to initiate barbed versus barbless hook studies in winter steelhead fisheries in the near future.

Fishing is currently permitted on the Smith River from the fourth Saturday in May through March 31. The proposed regulation change suggests extending the fishing season in the main stem Smith River below the Middle and South forks from March 31 to April 30. Prior to 1998, this reach of river was open to adult steelhead with no impacts to the Smith river Steelhead revenue. Based on the Department's own creel census information, no incidents of Coho Salmon emigrants occurred.

The Smith River resource is healthy and is not listed under the Federal ESA; and, therefore, poses no conflict with the MOA signed by NOAA fisheries and the Department. In addition, the Commission indicated it wanted to make the changes to the Smith River Steelhead fishery as a test to determine if similar changes could be made to the north coast anadromous streams. In creating this study, the Commission acknowledges there may be some minor enforcement burden until anglers become fully aware of the new regulations, but the additional angler opportunity outweighs the initial burden.